

The petition for waiver should be denied because its representation demonstrates significant harm to the public and fails to demonstrate any significant compensatory benefit to the public. The potential unguaranteed benefit that some number of motion pictures might be released to pay-per-view a few days sooner is of trivial value to consumers at best. The petitioners claim that the public will benefit because causing their TVs not to display "new" content, e.g. live coverage of today's football game, will accelerate the transition to DTV by forcing the public to buy new television sets is outrageous. Discontinuing existing service is the public harm that the FCC has struggled to mitigate in the DTV transition. MPAA member and television manufacturer Sony, would benefit most, and all MPAA members through MPEG HDMI AC3 and HDCP licensing fees imposed on all new equipment. The American public would not.

The waiver proposed by the MPAA is harmful to consumers like me because it seeks to require me to buy new televisions, despite having recently bought new equipment for the DTV era, because the members of the MPAA delayed and modified the "HDCP" protocol so that many sets with HDMI connections do not have HDCP as they presently define it. I have 2 recent televisions with early HDCP and one video projector with only DMI and RGB component analog inputs for HDTV. I would have to discard all of these and buy new sets to satisfy the MPAA. Why should I have to spend another \$3,000 just to line Hollywood's pockets? So they can shower 100's of millions more on Barak Obama or their next pet cause?

The waiver proposed by the MPAA falsely claims the existence of an "analog hole" with respect to high definition television content. In fact, although it is in theory possible, and has for many years been sought by home theater enthusiasts, there are no devices available for sale in the market that can capture high definition analog component content. These devices do not exist because it proved to be simpler and cheaper to bypass each new digital content protection scheme.

The waiver proposed by the MPAA falsely claims the existence of effective protection of high definition television content by current methods; e.g. HDCP on HDMI. In fact, all of the protection methods used to transfer images to all current televisions have been defeated.

The waiver proposed by the MPAA falsely claims its purpose is to protect high value content enabling new distribution models without endangering existing businesses. In fact, the purpose of the requested waiver is to vitiate the famous "BetaMAX" ruling by marking content as unrecordable. The proposed waiver would apply equally to every news broadcast, sporting event, soap opera, and "digitally remastered" rerun of "Gunsmoke". The definition of "new content" can be expected to be inflated creatively to encompass all content.

The waiver proposed by the MPAA falsely claims its purpose is to protect high value content from conversion to pirated DVDs. In fact, the MPAA members petitioning the commission clearly do not see the distribution of pirated DVDs in North America as reason to alter their distribution schedules. The MPAA members release of content digitally, including to retail DVDs, outside of North America

and Western Europe has been the most commonly cited source of high quality pirated DVDs in recent years.

The proposed waiver should be denied because the courts have already ruled on the content protection flag revisiting the BetaMax decision. The MPAA presented the courts with substantially the same arguments offered in the petition for waiver both in BetaMax and the more recent case. The continuing evolution of the technical means used to deliver television were not and are not relevant to the fair use reasoning that is the essence of the decisions. There is no substantial rationale for the commission to grant the petition and thereby create conflict with long established case law.

The waiver proposed by the MPAA falsely claims its purpose. Past and recent activity of MPAA members suggests the purpose of the petition is to seek legal cover for a technological means to return to a fee per viewing business model reminiscent of the theater ticket despite the doctrine of fair use of copyright protected materials. The heavy investment in the development and deployment of the self-destroying DVD is one reliable indicator. The MPAA members have also recently used their distribution agreements to force DirecTV, among others, to cause their DVRs to erase pay per movie content after a few days, whether viewed or unseen, presumably to require repayment for subsequent viewings, a clear transgression of the enforceable boundaries set by the fair use doctrine.

The waiver proposed by the MPAA is also harmful to consumers like me because the lack of any objective standard for content protection testable by a neutral party can and should be expected to be used to justify anti-competitive behavior. The MPAA members have for many years made sweeping distribution agreements connecting otherwise unrelated products and services. Armed with the proposed waiver, using such agreements MPAA members could effectively nullify all antitrust law and fair trade requirements by arguing that comprehensive distribution agreements through differing services are not equivalent by reason of differences in their content security that are beyond the review of the relevant agencies and the courts.

The proposed waiver will further harm consumers already unjustly taxed by the MPAA members use of technology licenses. The MPAA seeks to license another technical barrier to content distribution. The expected per-set licensing and certification fees further aggrandize a set of fees that already comprise the lion's share of the cost of a DTV tuner or a DVD player. There is no reason to further extend this anti-competitive trend.